

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1042 of 1997

in

SPECIAL CIVIL APPLICATION No 4234 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASHOKKUMAR POHUMAL DEVNANI

Versus

FOOD CORPORATION OF INDIA

Appearance:

MR PV HATHI for Appellant
NOTICE SERVED for Respondent No. 3
M/S THAKKAR ASSOC. for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 26/03/98

ORAL JUDGEMENT

1. Admitted. Mrs. Pahwa, learned counsel for the

respondent appears and waives notice of admission on behalf the respondents. In the facts and circumstances, the matter is taken up today for final hearing.

2. This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No.4234 of 1997 on July 25, 1997. On that day, the following order was passed :-

"Rule. Ad-interim relief in terms of paragraph 14(B) on condition that the petitioner shall vacate the premises in question on or before 30th November, 1997 and shall pay the market rent of the said premises for the period from 16th May, 1997 till the date of vacating the same at the rate which may be determined by the respondent after giving an opportunity of hearing to the petitioner. In the event the petitioner fails to hand over vacant possession of the premises by 30th November, 1997, he shall pay rent at the rate of Rs.5000/- with effect from 1st December, 1997 as directed in the impugned order. Direct service permitted."

Paragraph 14(B), on which terms interim relief is granted by the learned Single Judge, reads thus:

"(B) Pending admission, hearing and final disposal of this petition, be pleased to stay the execution, operation and implementation of the order dated May 24, 1997 issued by the respondent No.4 (Annexure-E)."

3. Appellant is the original petitioner, who was serving with the respondent-Food Corporation of India ("Corporation" for short). By an order dated March 12, 1997 he was transferred. It was the case of the Corporation that though the appellant was not entitled to a particular type of quarter, he occupied that quarter for which he had to pay rent. It is also the case of the Corporation that in spite of asking the appellant to vacate the quarter, he did not vacate it. Accordingly, an order was passed on May 24, 1997, which is the subject matter of Special Civil Application No.4234 of 1997.

4. As per the order passed by the learned Single Judge, the appellant was bound to pay an amount of rent

in accordance with the terms and conditions on which interim relief was granted.

5. Mr. Hathi, learned counsel for the appellant submitted that the impugned action taken by the Corporation was illegal, mala fide and with a view to prejudice and harass the appellant, it was taken.

6. We are of the opinion that, when the petition is pending for final hearing, it is neither proper nor advisable to enter into those questions and, accordingly, we express no opinion thereon.

7. On interim relief, Mr. Hathi contended that when the petition is admitted, the learned Single Judge ought not to have imposed a condition by allowing the respondent-Corporation to decide the amount of rent. It is argued that, in any case, when the respondent-Corporation has in the impugned order in unequivocal terms stated that the appellant would have to pay an amount of Rs.5000/- per month, it was not open to the learned Single Judge to direct the Corporation to decide the rent. By taking undue advantage of the wording of the order, the authority had gone beyond that amount. The Corporation had fixed monthly rent of Rs.7500/- which was clearly illegal. It was also stated that the learned Single Judge has not observed in the impugned order that the order passed on July 25, 1997 challenged in Letters Patent Appeal is subject to final outcome of the proceedings.

8. Mrs. Pahwa, on the other hand, supported the order passed by the Corporation. Regarding bias and prejudice, she refuted the allegations. But, as stated above, we are not expressing any opinion and at the time when the matter will be taken up for final hearing, the learned Single Judge will decide it.

9. So far as interim order is concerned, it was contended that when the appellant has not complied with both the conditions, namely, (i) vacating the quarter on or before 30th November, 1997; and (ii) payment of Rs.5000/with effect from 1st December, 1997, the appellant may not be permitted to argue the matter on merits. She also submitted that in spite of the interim order, neither the appellant vacated nor he paid the amount of rent, which compelled the Corporation to file even a contempt petition and some payment was made only after the initiation of contempt proceedings.

10. On amount of rent, she submitted that, looking to

the order dated May 24, 1997 (Annexure-E to petition), it is clear that Rs.5000/- was not fixed as final figure, but it was fixed "without prejudice to the right of the management to further increase the same". She further stated that, as per interim order passed by the learned Single Judge, the amount was fixed in accordance with law after affording opportunity to the appellant and, hence, the amount which is fixed is clearly legal and valid.

11. Without expressing any opinion on merits of the matter, in our view, ends of justice would be met, if the following directions are issued :

- (1) It is stated by Mr. Hathi that the appellant has, by now, vacated the quarter, which is not disputed by Mrs. Pahwa, learned counsel for the Corporation. Hence, the question of vacating the quarter does not arise.
- (2) Regarding amount of rent to be paid, in our opinion, it would be proper if the appellant is directed to pay an amount of Rs.5000/- per month from 16th May, 1997 to 30th November, 1997.
- (3) From 1st December, 1997, the learned Single Judge has observed in the impugned order that the appellant will pay an amount of Rs.5000/and the appellant will pay such amount till he vacated the quarter.
- (4) All these payments and the orders passed by the learned Single Judge would be subject to final outcome of the proceedings.

10. With these directions and modifications, appeal deserves to be disposed of and is, accordingly, disposed of. In the facts and circumstances of the case, no costs.

11. Mr. Hathi, learned counsel for the appellant submitted that the Rule is not made returnable and if the hearing is to take long time, the appellant would suffer a lot. In the facts and circumstances, liberty is granted to the appellant to request the learned Single Judge for early disposal of the matter and as and when such a request is made, the learned Single Judge will consider the same and pass an appropriate order.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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